

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 72 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? yes

2. To be referred to the Reporter or not? yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

BHARATBHAI RAYCHANDBHAI KHONA

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/02/98

ORAL JUDGEMENT

1. Ld.advocate, Mr.A.M.Parekh appearing for the
petitioner has stated at Bar that the petitioner does not
press for the prayer made vide para 5(C) claiming to
quash and set aside the order dated 22..9.97 passed below

bail application of the petitioner. Leave to amend as prayed is granted.

2. Rule. Ld.APP, Miss B.R.Gajjar waives service of rule on behalf of respondents. With the consent of learned advocates for parties matter is taken up for final hearing. The petitioner has challenged the legality and propriety of the order passed by the Ld.Metropolitan Magistrate, Ahmedabad, Court No.11 dated 22.9.97 produced vide page 20 of the paper book.

3. It appears from the record that DCB Police Inspector, L.H.Desai has given a report to Metropolitan Magistrate Court No.11 vide Javak No.3406/8 dated 22.9.97 declaring the fact that in the Crime register vide Cr.No.0024/97 for the offences under sections 406, 420, 465, 468 and 144 against the petitioner on the complaint of one Piyushbhai Tusharchandra Desai an additional charge under Section 467 IPC is added by the Investigation Officer, and he has also informed to the court the fact that during investigation certain documents have been seized and taken into custody as muddamal and such documents were forged passports and fake visas. That the Ld.Metropolitan Magistrate, Court No.11, Ahmedabad has passed the order as under:

"Recorded and kept with FIR, dated 22.9.1997"

4. Mr.A.M.Parekh, Ld.advocate appearing for the petitioner has vehemently urged that the Ld.Metropolitan Magistrate has grossly erred by passing the above stated order without giving any opportunity to the accused in contravention of the provisions of Section 216 Cr.P.C.(hereinafter referred to as "the Code"). He has further submitted that by the said order, the Ld.Metropolitan Magistrate has caused prejudicial effect to the liberty of the petitioner as subsequently thereafter bail application on completion of period of anticipatory bail granted to the petitioner has been rejected by the Ld.Magistrate on account of addition of offence in the Crime register.

5. On appreciation of the facts and circumstances apparent from the record the submission urged on behalf of the petitioner could hardly be accepted though made with utmost vehemence. It may be noted that after recording the FIR as given by the informant--the original complainant Piyush Tusharchandra Desai as required under the provisions of law the DCB Police Inspector has forwarded the copy of the FIR to the court of competent jurisdiction, i.e. Ld.Metropolitan Magistrate Court

No.11 and had started investigation. During the investigation the Investigation Officer having come across some new facts and documents has thought it fit to add additional offence under section 467 and thereby has sent intimation to the court informing about the addition of said offence. Said procedure followed by the police authority can not be said to be illegal or irregular and the order passed by the Ld.Metropolitan Magistrate recording the said intimation and directing the court clerk to keep the same along with the FIR does not suffer with any infirmity or perversity.

6. It appears that the petitioner has preferred the present application under some misconception. At the stage of investigation the court can not take cognizance of the offence alleged against the accused and thereby there is no question of granting any opportunity to he accused while adding any additional offence during the investigation.

7. On the above stated discussion, the revision application fails and stands disposed of as rejected with no order as to costs. Rule is discharged.

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